

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

26873

FILE: B-212196

DATE: November 22, 1983

MATTER OF: Cassidy Cleaning, Inc.

DIGEST:

Procuring agency properly considered a telegraphic acknowledgment of an amendment to bid received after bid opening since the amendment was received late due solely to government mishandling.

Cassidy Cleaning, Inc. (Cassidy), protests the award of a contract to CHOI Enterprises, Inc. (CHOI), under invitation for bids (IFB) No. N62477-82-B-3419, issued by the Naval District Washington, Washington, D.C. (Navy), to perform custodial services.

For the reasons stated below, we deny the protest.

Bids were opened on April 18, 1983, at 2 p.m., e.s.t., and, of the six lowest bidders, it appeared that only Cassidy had acknowledged receipt of amendment No. 0002 issued April 7, 1983, which made material changes in the contract requirements and which bidders were required to acknowledge. The procuring agency informed Cassidy that it was the apparent low bidder.

However, within an hour of bid opening, a Western Union telex was discovered from CHOI, doing business as Orient Janitorial Services, which acknowledged amendment No. 0002 and stated that its bid amount was unchanged. CHOI's telex indicates that it was delivered to Western Union at 12:15 p.m., e.s.t., and was received by the Chesapeake Division at 1:35 p.m., e.s.t., April 18, 1983, which was 25 minutes before bid opening. The procuring agency states that through oversight on the part of government personnel at the telex machine, the message was not called to the attention of the bid opening officer until approximately 1 hour following bid opening.

Cassidy contends that although CHOI did send its amendment on time, it was not received by opening time because it was not properly addressed.

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Section 0002, paragraph 4, of the IFB provided that acknowledgment of amendments by telegram would be considered if received prior to bid opening. The record indicates that CHOI telegraphed its acknowledgment to "Chesapeake Division, Naval Facilities Engineering Command, Building 150, plans and specs, Anacostia, Washington, D.C. 20374." Contrary to Cassidy's contention, CHOI's telegram was properly addressed to the office designated in the solicitation and the telegram was received at 1:35 p.m. on April 18, 1983.

The amendment is part of the bid and, therefore, an acknowledgment of an amendment received after the closing time is governed by the late bid provisions. Defense Acquisition Regulation (DAR) § 7-2002.2 (Defense Acquisition Circular No. 76-18, March 12, 1979) and section 0002, paragraph 7, of the IFB provide in pertinent part:

"LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1979 MAR).

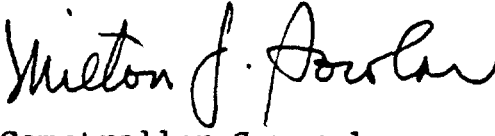
"(a) any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and . . .

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"(ii) it was sent by mail (or telegram if authorized) and it is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the government installation."

Since acknowledgment of amendments by telegram was authorized, the issue is whether the late receipt was due solely to government mishandling. The record indicates that CHOI's amendment was properly addressed to the issuing office and was received there at 1:35 p.m. on the bid opening day. The Navy indicates that CHOI's amendment was received by the government a sufficient time prior to bid opening to have been considered timely in the ordinary course of events. The Navy further states that it was solely through oversight on the part of certain Navy personnel that CHOI's amendment was not brought to the attention of cognizant officials until after bid opening. The contracting officer determined after review that CHOI was in no way responsible for its amendment not being received by the opening time. Cassidy has not produced any

evidence that CHOI's amendment was received late through its own fault. Under these circumstances, CHOI's bid was properly considered for award as the low responsive bid. See Hydro Fitting Mfg. Corp., B-183438, June 2, 1975, 75-1 CPD 331, and cases cited therein.

We deny the protest.

for 
Comptroller General
of the United States